Wing O-644

OVERTURES

FOR

Correcting and Amending the

LAWS.

Humbly Presented to his Grace the Duke of *Queensberry*, His Majesties high Commissioner,

And the Honourable Court of

PARLIAMENT.

By a Well-wisher to his Countrey.

Printed in the Year 1700.

Dedication.

May it please your Grace, &c.

ALbeit our neighbouring Nations be ſurfeited, yet it is the Misfortune of this to be ſtarved, through want of Municipal Laws, for ſecuring the Subjects in their Rights, by known and fixed Statutes, and not leaving and expoſing the ſame to the arbitrary Sentiments of Judges. And though for ſeveral Centuries ago, and even to this time, there have been reiterated Commiſſions appointed for reviſing of the Laws, which are made, and Correcting thereof, or enacting what new Laws were neceſſar and expedient for the Good of the Leidges, yet the ſame have never hitherto taken effect, being neglected by theſe who were appointed, having no ſuitable Encouragment for their Pains upon that account: Likeas, Parliaments being only called for Emergencies, requiring ſpeedy diſpatch, through the Weight of theſe Affairs, had not the conveniency to call for an Account of what was done by theſe commiſſionat, as ſaid is. And it being the Cuſtom, Intereſt and Prudence of Princes, to gratifie their Subjects with ſuch Laws at the opening of Parliaments, as may eaſe them of ſevere and penal Rigidities, impoſed more by exorbitant Cuſtom than by clear and poſitive Law, or material Juſtice and Equity, ſuch as Eſcheats, Recognitions, Wards and Marriages, and the like, which belong to His Majeſty, which little or nothing augment the Theſaury, and yet great Hardſhip upon the Subjects, by gifting to Donatars, who have ſcrewed the ſame far beyond their due Limits, which are ſo notour, that there is no need of Inſtances, and which have much prejudged and vexed theſe who ſuffered thereby, and irritat them not only to Clamor againſt the ſame, but alſo the Government it ſelf: For remeed whereof (in part) theſe following Overtures are offered to your Grace, and the Honourable Court of Parliament, which Natively center at you, not only in reſpect of your preſent Character, but alſo of your Intereſt and Quality, the firſt being equal to what ye can deſire, and the laſt to what is here attainable, ſo that nothing remains for your Grace and the Honourable Houſe, but to ſecure your ſelves by juſt and inviolable Laws, which is now the proper Seaſon, the Nation being in full and tranquil Peace; And in this you have for your Pattern, the great Emperor Juſtinian, who compiled the whole Roman Laws now extant, after he had made an end of Fighting, and ſubjugated the World to his Scepter, and by doing whereof, ye will cure (at the leaſt,) eaſe the Nation of ſome of its preſent Maladies under which it labours. I doubt not but others may addreſs your Grace with Overtures, which may be both more neceſſar and material; And therefore I leave theſe to ſuch as are more fit than I, Seing none omnibus unum eſt.

Quod placet hic ſpinas colligit ille roſas.

OVERTURES

OVERTURS

Anent *LAWS* to be made.

And first,
Anent Husbands and Wives Interests and Rights to the Estates of each others.

SEing by Our Law, where the Husbands Estate consists only of Bonds bearing Annualrent; The Wife when Relict hath neither Third of the same, nor Terce of the Annualrents. That therefore it be Statute she have one of them.

2. That the Husbands *Jus Mariti* extend no ways to the Wifes Heretable Estate, but only the Annualrents thereof accreuing before, and during the Marriage: And that he nor his Creditors nor Successors have no farder Interest in her Moveable Debts or Goods, except there be expres Provision made by her thereof; And if the Husband hath not exerced his *Jus Mariti* in his own time, as to the uplifting of these Annualrents, The Right thereof shall cease and remain with her and her Representatives, but with the burden of what Debts he hath payed for her.

3. That the Husband shall not be lyable for the Wifes heretable Debt, nor yet for her Moveable due before the Marriage, nor contracted during the same, except where it is necessar, and for the behove of the Husband, and that the Quantity and Contracting shall be probable by the Wifes Oath, and he lyable, unless he can give his Oath of Calumny that he has reason to believe she will depone to his prejudice, of design to burden him with an unjust Debt.

4. The Marriage being Solemnized and the parties once Beded, all the Obligations thereanent to be valid and effectual as to all effects, tho' it last not Year and Day.

5. That Wives personal Obligments during the Marriage be null, as also Renounciations of their Joyntures or any part thereof, without consent of their Parents (if Living,) or two of their neareſt Relations (if their Parents be Dead) except it be Remunerated by giving the equivalent both as to Security and Quantity.

Anent Parents and Children.

1. That it shall be leisum for Parents on Death-bed to provide their Daughters and younger Children by Bond or Legacies, and which shal affect their Executers and Heirs, The samen not to exceed years Rent of their Estate, And that the said Estate be free, and if it be not, that the Provisions shall only be sustained in so far as they and the Debt shall extend to six years purchase thereof.

2. That the Parents be obliged to Aliment and Educat their Children, except they can give a reasonable Cause to the contrair; And Children to maintain their poor Parents, according to the Quality of the Parents, and the condition of the Childrens Estate.

3. That for the publick good it ſhall be leiſum for Children to leave their Parents, and go to any Trade or Imployment after they have attained to 14 years of Age, if the Parents cannot Educat therein, Or ſome other that may be as much to their Credit and Profit.

4. That it ſhall be leiſum to take the poor Children within ten years, and to retain them as Servants untill they be 30 years old.

Anent Tutors, Curators and their Pupills.

1. That Tutors of Law be cognoſced to be not only of the Age and Relation requiſit, but alſo that they are reputed fit to manage, and of good Fame and Reputation.

2. Where Tutors are named, whether with or without a *Quorum*, or *ſine quibus non*, if any one of theſe named accept, he ſhall ſeclude the Tutor of Law, unleſs he alſo have been named one of the Tutors by the Defunct; and that theſe who act and behave as Tutors and are not legally entered and admitted to the Office, ſhall not only be lyable as Tutors or Curators, but ſhall have no allowance of their Charges and Expenſes that they have laid out either upon the Pupil or his Affairs.

3. That Tutors and Curators ſhall be obliged to lend out for Intereſt their Pupils Money, whether principal Sums, Annualrents or Rents of Lands, and pay intereſt therefore, from the next Term at which it came in their hands, except they have emitted publick Edicts that the ſame is in their hands, and was ready to be lent upon Security.

4. That Tutors Teſtamentars are not to be lyable for Omiſſions, and that it ſhall be leiſum for Tutors and Curators to accept with that Quality, and that the Judge admit the ſame, unleſs the neareſt of Kin or ſome other perſon intereſted offer themſelves or others to undertake the office ſimply without any ſuch Qualification.

5. That where there are more Tutors and Curators than one, and if any one of them act or intromet, he is firſt to be conveened and diſcuſt before the reſt be lyable, but ſo as if he be not found ſolvent, The Pupil ſhall have recourſe againſt the reſt for the Expenſes he has been at in purſuing and diſcuſſing the ſaid inſolvent perſon.

6. That all Curators named, Depon, that they have not uſed any means, or made any deſire or motion to the Pupil or any other for their being elected, and if they refuſe to Depone, That they be rejected.

7. That Minors be not allowed to make Teſtaments without conſent of their Curators, But that Legacies left by them (expreſſing the Cauſe) be allowed according as the ſame ſhall be found juſt by the Judge Ordinar.

8. That there be no Action ſuſtained whither Petitory or Poſſeſſory againſt a Minor as to Lands or Heretable Rights, wherein his Father was by vertue of legal Titles in poſſeſſion uninterrupted Year and Day.

9. That no Interdictions be ſuſtained, but ſuch as are after Cognition of the Cauſe thereof taken by the Judge Ordinar, and that it ſhall be leiſum for any near Relation or perſons intereſted in the Preſervation of any perſons Eſtate, To apply to the Lords of Seſſion for cognoſcing the Defender to be *Prodigus*, and to be interdicted accordingly, and that the ſame ſhall not be taken off, but by the ſentence of a Judge *& cauſâ cognitâ*.

Anent Obligations and Contracts.

10. That where by Contracts betwixt two parties, there is ſometimes Clauſes conceived in favours of third parties, That it ſhall be in the power of

of the parties Contracters, to nullifie or discharge these Clauses without consent of that third party, unless the Contract be in his hand.

2. That no Verbal Conditions, Promises or Pactions shall be Probable by Witnesses, being lyable to Mistake, and uncertain as to the design and meaning of the Promiser.

3. That the Depositation of Writs, or the Conditions of granting thereof, shall not be Probable by Witnesses, or the Oath of the Depositar or Haver, but only by Writ or Oath of the Granter, because that is in effect to evacuat Writs by Witnesses, or to make up the same thereby, which is to make Witnesses as valid and effectual a mean of Probation as Writ.

4. That albeit by our Law, Interest be not due for Money, without Paction, until the Debitor be charged and denunced, which is needless Trouble, and very Expensive, and may tend to the Prejudice of Creditors, if he should happen to be denunced; that therefore after simple requisition of the Money due by a liquid Bond, Ticket, Subscribed Accompt, or the like, Annualrent shall be due even as if there were an expres Paction for Payment thereof, seing by the Requisition the Debitor is *in mora*.

Anent Infeftments and Real Rights of Lands.

1. That where any Person stands Infeft in Lands, as having purchast the same himself, or as Heir to some of his Predecessors, there shall be no more requisite for establishing the Right thereof in the person of his Heir who is to succeed him in the saids Lands, but only a general Service before the Sheriff of the Shire where the Lands ly, cognoscing the Pursuer of the Brieve to be General Heir, and of Line, or such an Heir as is mentioned in the Brieve; and this being Registrat and Retoured, shall be a sufficient Right to the person served, without any further Progres or Solemnity in Law, conform to the Law of *France*, and many other Nations.

2. That where there is Infeftment taken in name of the persons first institute, and to these *nominatim* substitute, that these substitute shall not be put to further trouble for stating the Rights in their persons, failing these who are institute or substitute before them, but only cognosced by an Inquest, that these persons are failied, and that he is next substitute, and that the same being cognosced, shall be a valid Right without any farther.

Anent Superiorities and the Casualities thereof.

1. That the King receive all singular Successors *gratis*, seing the ground of Law for paying Compositions, is, that the Superior receives a Stranger in place of his Vassal, and that there is no Subject can be repute a Stranger to the King, and so there ought nothing to be exacted for his Entry, and the exacting thereof is a Novelty, not being so from the beginning.

2. Seing the Superior gets all his Duties and Casualities from the Vassal, or his Fee, as well when not Entered as when he is; that therefore there be no Nonentry esteemed in Law, unless the Vassal be contumacious and convicted of Contempt against his Superior, and that from and after a Decreet of Nonentry to be recovered against him, he always being Major.

3. That the Value of Vassals Marriages be only estimat and proportional to the Value of the Fee held by them in Ward, and wherein no regard is to be had to their other Estate Personal or Real.

4. Or rather that the Wards be turned into Feu, and an estimat put on the Marriage, by which the captious way of catching Vassals, by making offers of Matches to them, will be remeeded; and this Estimat put upon their Mar-

 riages,

riages, to be either according to their Charter extant, or according to the present Valuation of their Land, which may be either done by Taxing the Marriage, or making the Feu-duty more, in lieu of all.

5. That no Escheats (Liferent or Movable) fall, or be gifted, to the prejudice of lawful Creditors, and that they have no place untill all the Rebels Debts be payed. seing by the Law of all other Nations it is a received Maxime, that *Ita bona debent transire ad fiscum qualia fuerunt apud delinquentem & cum omnibus oneribus & debitis.*

Anent Fiars and Liferenters of Lands and Sums, and the Courtesie due to Husbands.

1. That the last Termination being of the Heirs of any who are institute, infer that person to be the Fiar.

2. That the Terce extend to Lands and Teinds, and all that is Heretable, and Bonds bearing Annualrent, seing the Relicts have no Third thereof, and therefore ought to have a Liferent-Terce, where there is no Contract of Marriage.

3. That Superiors receive Liferenters *gratis*, without any Composition, seing there is no change of Vassals, and that they ought not to be put to the Trouble and Expense of Adjudging upon the Obligment in the Contract of Marriage.

4. That Tochers and Joyntures be both due, tho' the Marriage subsists not Year and Day, if it be Consummat by going to Bed; and that the Husband have the Courtesie of all Lands wherein the Wife either was or might have been Infeft, if the Marriage be Consummat as said is.

Of Teinds.

Teinds being Jewish, and a part of the Levitical Law, and of no Divine Right now under the Gospel, that therefore they be Consolidat with the Stock, and the Proprietar or Tacks-man put to pursue for the Price that shall be appointed to be payed therefore, and that the Price of the Teinds be first applyed for buying a Maintainance for the Minister, whether of Land or Annualrent, out of the Property, which in all possible Events may be a Competency; and if in after times it shall be necessar to augment the same, that it be done by a personal Pole of all within the Paroch, to be casten upon them yearly.

Of Tacks.

1. That Tacks set at the usual and ordinary Avail of Lands in that place, or at which these were formerly set, shall be valid against Wards, Escheats, Nonentries, Forfaultures, and all other Casualities of Superiority.

2. That Tacks set be inviolably observed, that Tennents may be thereby encouraged to Plant and Inclose, Meliorat and Cultivat the Land, and that they Enjoy the same peaceably during all the years thereof; providing always, that if the Master (for his own necessary use and utility) shall think fit, either to Labour or Inclose the same himself, either in whole or in part, that it shall be leisum for him to do the same, notwithstanding of the said Tack, he always refounding to the said Tennent, what Grassum or other Gratification he has got for making the said Tack, proportionally and effeiring to the Grassum and number of Years he was to enjoy the same; or if there was no Grassum, the Master paying the Damnages that shall be found the Tennent has sustained thorow his being removed from his Possession as said is.

Of

Of Tranſmiſſion of Rights, and alſo of the Extinction thereof.

1. That Superiors be bound to accept of Reſignations *in favorem*, and that an Inſtrument of Refuſal, ſhall be as to all intents equivalent to an Charter and Seaſin by the ſaid Superior, unleſs at the taking of the ſaid Inſtrument he give the Reaſon of his Refuſal, and inſtruct the ſame before the Judge Ordinat within Year and Day, to whom it is remitted to judge both the Relevancy and Verity thereof.

2. That Recognitions be abrogat, at leaſt as to the King's Vaſſals, ſeing all Subjects are alike as to him, and it imports not which of his Majeſties Subjects be his Vaſſals in any particular Fee.

3. That there be no Recognition in Taxt-Ward, providing the Feu-duty payable out thereof, be effeirand to the Taxt-duty and Marriage, if the whole be feued, and proportionally if a part; In which caſe the Superior can pretend no Damnage or Loſs.

Anent Preſcription and Interruption.

1. That there be a difference made as to the Preſcription of Moveable and Heretable Rights and that the ſame be ſhortned in both.

2. Seing the firſt regiſtrat Seaſin is repute a publick Infeftment, that therefore there be no longer any defence ſuſtained upon the benefite of a *Poſſeſſory Judgement*, the firſt regiſtrat Seaſin being equal to a publick Infeftment ſince the Date of that Act.

3. Seing in Preſcriptions both *Titulus*, and *bona fides*, are requiſite, that therefore one of the Parties privat knowledge of the Right of another, albeit not compleat, is, that he had a Diſpoſition, but no Infeftment put him *in mala fide*.

4. That all legal Interruptions ſhould be againſt the perſons themſelves, and not Co-debitors; And that Diligence againſt one Co-obligant, ſhould not preclude the other of the defence of Preſcription.

5. That albeit Inhibitions be only negative Rights, yet the extent of them is become ſo exorbitant, that they are of far more Force and Effect nor an poſitive Right by Diſpoſition; And alſo in reſpect it is yet dubious from what time Inhibitions take effect, whether from the Date of the Execution againſt the Party, or at the Mercat Croſs of the Juriſdictions where the perſons dwell, or the Lands ly, or that it ſhall only take effect from the Date of the Regiſtration, which ſeems to be more juſt, ſeing the Leidges are there only certiorat, the executing at Croſſes being now a meer Formality, paſſing without the notice of any, ſo that the only mean of knowing who is Inhibite, is by ſearching the Regiſters:) Therefore, that it be enacted, that in all time coming Inhibitions being raiſed and execute againſt the Party perſonally, and regiſtrat either in the general Regiſter, or Books of the Juriſdiction wherein he dwells, within 48 Hours thereafter, ſhall be valid from the Date of the ſaid Regiſtration, without any further Solemnity.

The reaſon why the Regiſtration may be within ſuch ſhort time, is, becauſe the Execution is only to be againſt the Party perſonally, without any further Execution at Mercat-Croſſes where the Debitors Lands might ly, ſo that it took a conſiderable time before it could be done, but here where there is nothing requiſite but a perſonal Execution, it may be within 24 Hours carried to the Regiſter, or Juriſdiction where the perſon inhibite dwells, and inſert in his Regiſter or Minut-Book thereof.

6. *Item*, That Inhibitions run from the Date of the Registration thereof, and not from the date of the Deed that is done contrair thereto.

7. That Libels for House-Mails, Merchants-Accompts, Servants-Fees, and the like, shall not be relevant, unless they also bear that they are resting, owing, and that the same be only probable *scripto*, if the Debitor be dead and *scripto vel juramento* if living, and that therefore Merchants take Writ for what they furnish bearing the Quantity and Price thereof.

Of Voluntar Assignations and Legal Arrestments.

1. That where an Assignation is purchased for Money, or other good Deed from a person, that is not of Relation, or such a person as would be thought not to have gifted the same, in such a case (according to the common Law) the Assigney shall recover no more from the Debitor than he truly payed, or his Fact or Deed done by him can be estimat worth by the Judge Ordinar, and this to prevent & discourage the taking and buying unnecessarly the Debts resting by others.

2. That where the principal Writ assigned is delivered at the time, it shall be preferred to any other Assignation, tho' first intimat, the said Writ being probable, and Possession compleating the Right.

3. That neither Inhibitions nor Arrestments pass of course, but by a special Deliverance of the Lords in presence, or upon a Report, and upon instructing sufficiently, grounds for founding thereof, and that the Inhibition being only a personal Inhibition, that the Debitor put not his Estate in a worse condition than it is at the time of the serving thereof: That therefore it subsist and stand good only for such a Number of years as the User may have time to constitute his Debt, and when constitute, or if it be liquid before, that he may have a competent time within which he may do legal Diligence by Adjudication, and that no Inhibition upon a dependance last longer than three years, unless real Diligence follow upon the Debt, which was the ground thereof, and that the Inhibiter consent to the Sale, upon payment or Consignation of the Price, or lending the same, so as it may bear Interest, which is more for the Inhibiters advantage.

4. That all Arrestments within year and day come in *paripassu*, or within a competent time, seing Adjudications and Appryings which are the paralel Diligence as to hereitable Rights, come in so; And the same Parity of Reason is in the arresting of Moveables, that is, in the adjudging of Hereitables, which is, that the Creditors may be absent, and not know of the Debitors Estate and Condition, nor of his Moveables and Money, nor that he is *vergens ad paupertem, & ubi paritio eadem debet esse Lex.*

Of voluntar Dispositions and legal Conveyances by Appryfing and Adjudication.

1. That the first person who purchases Lands, being infeft therein, and his Seasin registrat, there shall be nothing requisit for establishing the Right thereof in the person of his Heir, to whom by the Infeftment the same is provided, whether Heirs of Line, or Male, but only an Service cognoscing the Pursuer of the Brieve to be the person to whom by the Conception of the Infestments the Fee doth belong, and this being retoured, shall be a sufficient Right to all succeeding Heirs, who are in like manner to be served Heirs to the last retoured, which shall also be to them a compleat Right to the saids Lands, and a valid Title for all effects.

2. That where Lands are not affected with Rights or Incumbrances, it shall not be leisume to Appryse or Adjudge the same, but that the old Brieve of Distress

ſtreſs ſhal be revived, direct to the Sheriff, who ſhal Adjudge as much Land to the Purſuer, to be valued by an Inqueſt, as will ſatisfie the Debts; and if the Lands be indiviſible, and worth more, that the Creditor pay it in, otherways the ſame to be null.

Of Confiſcations, Eſcheats, Forfaultures, and the like.

1. That Denunciations for not payment of Debts, the effect thereof ſhall only be for obtaining Caption and Payment of the Debt before others who have done no Diligence, and that the Eſcheat extend only to the Debt in the Horning.

2. That no Eſcheat ſhall fall upon any Denunciation, except the Charge was given Perſonally, or that Acceſs was refuſed; ſeing by our Law Contumacy cannot be inferred without a Perſonal Citation, ſo far leſs ought it in this caſe, where the Certification is of ſo great an Import.

3. That Charging Perſonally, and Denuncing at the Mercat-Croſs of *Edinburgh* be ſufficient, and Regiſtration alſo there, which is ſufficient to certiorat all the Liedges thereof.

4. That Denunciations ſhall not prejudge any Party who *bona fide* get Obligations for onerous Cauſes from the Rebel, or receives Payment of Debts reſting to him by the Rebel, at what ever time the ſame be contracted, ſeing if it were otherways, it would extreamly mar the freedom of Traffique and Commerce.

Anent Succeſſion.

1. That where an Heretor of Lands and Baronies, or Country-Tennents dies leaving only Daughters, that the eldeſt ſhould Succeed *pro indiviſo*, and that Women ſhall Succeed as if they were Males after the ſame manner, but with this Proviſion, that it ſhall be leiſum for the Father *etiam in articulo mortis*, to grant Bonds of Proviſion to other Daughters, not exceeding Years Rent of his Land, and which ſhall affect the ſame, in ſo far as there is not ſufficient Movables for doing thereof.

2. That in regard many die without making timely Proviſions for their Children, it ſhall be leiſum for any man who is not a Baron, having his Lands erected in a Barony, to Diſpoſe of theſe Lands in favours of his Children *etiam in articulo mortis.*

Anent Heirs of all kinds.

1. That where an Eſtate is devolved upon an Heir by the death of his Predeceſſor, ſo that it is either his neglect and fault, or fraud that he does not Enter, eſpecially ſince (in the mean time) he acts as Heretor, or Intromets with the Rents, at leaſt might do the ſame; that therefore all Debts contracted, or Deeds done by him, ſhall affect the ſaid Eſtate, as if he were actually Infeft therein.

2. That Liferenters ſhall only be lyable for Alimenting theſe Heirs who have no Comperency left them, and deſcended of themſelves or their Huſbands; but no ways to be extended to Collateral Heirs, or theſe of Tailzie, not being deſcended as ſaid is, who are to be repute *tanquam extranei*

3. That the immediat younger Brother Succeed to the elder, whether in Conqueſt or Heretage, and tho' of different Marriages, unleſs the ſaid elder Brother have full Brethren and Siſters, in which caſe they are to be preferred to the Succeſſion as before.

 4. That

4. That where an Eſtate is devolved by the Death of a Predeceſſor upon the Apparent Heir, that he ſhall be perſonally lyable for the Predeceſſors Debt, unleſs he give an ample Renunciation to be Heir, and Record it either in the General Regiſter, or of the Shire where he dwells; and that there be no more libelled againſt him, but that he has not recorded the Renunciation within the Year, to infer the Paſſive Titles againſt him: And by this the great and unneceſſar Trouble given to all the Defuncts Creditors of raiſing and executing Charges to enter Heir, is cut off.

5. That it ſhall be leiſum to any Creditor of a Defunct, to uſe ſummarly Adjudication of his Eſtate and that inſtantly for payment of the Defunct his own Debt, without any further, but calling the Appearand Heir as Defender: And this will only be equivalent to the Confirming Executor-Creditor to him in his Movables.

Of Behaving as Heir and Lucrative Succeſſor.

1. That in regard by the 24 *Act. Seſſ.* 5. of this current Parliament, Heirs are allowed to Enter *cum beneficio inventarii*, to be made up within the Year and Day of Deliberating; and in regard the ſaid Act does not take under Conſideration the caſes of Apparent Heirs, who neither entered nor behaved as Heirs, prior to the date of the ſaid Act: For remeed whereof, that it be yet Statute and Ordained, that where Heirs are unentered to the Eſtates devolved upon them, and to which they are Apparent Heirs, prior to the date of the ſaid Act, that it ſhall be leiſum for them yet to enter Heirs to their Predeceſſors *cum beneficio inventarii*, in the Terms of the ſaid Act, and that within Year and Day after the Promulgation of the Act to be made hereanent.

2. That an Apparent Heirs receiving a Diſpoſition from his Father or Predeceſſor to whom he is to Succeed, ſhall not infer an univerſal Paſſive Title, but make him only lyable *pro valore*; and if it be granted for an onerous Cauſe, ſuch as in an Contract of Marriage or the like, it ſhal only be reduceable upon the head of Fraud, and being granted to the Prejudice of his lawful Creditors, to an conjunct perſon.

Of Teſtaments, Confirmations thereof, and others relating thereto.

1. That ſeing the ground and reaſon of Law for confirming of Teſtaments, is, *Ut bona ſint ſalva pupillis & creditoribus*, that therefore, where the neareſt of Kin are Majors, there ſhall be no neceſſity for them to confirm, nor any Dative made in that caſe; and that Creditors may Confirm, and Purſue to give up Inventar, or to make Payment, as vitious Intrometters, at their pleaſure.

2. That the Husband ſhall not be obliged to Confirm the Wifes Teſtament. nor give up Inventar thereof, ſeing he was and is *Dominus*, and may alienat and diſpoſe of his Movables during his life, and the Wifes Right is only by vertue of the Diviſion that falls between the Husbands neareſt of Kin and the Wife, in caſe that ſhe ſurvive him.

3. That the eldeſt Son or Daughter ſhall have a double Portion of the Movables where there is not an Heir, ſo that ſhe or he Succeed not as ſuch.

4. That Daughters married in the Fathers Life ſhall have no right of Succeſſion or Intereſt in his Eſtate, but what is expreſly provided in caſe there be moe Children, and if there be none, ſhe is to ſucceed as accords.

Anent

Anent the Form of Proceſſes and payment of Advocats and Clerks, &c.

1. That the Act of Sederunt be ratified, appointing two Lords to come each Forenoon to a place erected for that end, and there *per Vices* to call and finally diſcuſs and determine what Cauſes ly before them undiſcuſt, whereby the intollerable trouble and pains both Lords, Advocats, Clerks and Clients are put to in attending the whole Afternoon for getting ſuch Cauſes called will be prevented.

2. That the Act of Regulations made *in anno* 1672, anent the modifying Sallaries to Advocats, Clerks and others be totally reſcinded, and all Renovations, Ratifications thereof and others preceeding the date hereof relative thereto, as being burdenſome and impracticable both to them and Clients, and that they be payed as before that Act at the Diſcretion of the Clients.

3. That where Interloquitor or Sentence is pronounced, and Bills one or moe given in reclaiming againſt the ſame, and which is refuſed by the Lords, that neither the ſame nor no other Bill be inſert in the Act or Decreet, but ſuch as he in whoſe favours the ſame is, ſhall deſire and think fit to have inſert therein, and that the ſaids Regulations and all ſub equent ſtand in their full force as to all the other Articles thereof, except what is hereby altered as ſaid is.

Anent the Sale of Bankrupts Lands.

1. That in regard by the Act of Parliament the day of *September* 1681, *Anent the Sale of Bankrupts Lands*, There is no warrand or appointment for citeing the Creditors to hear Probation led of the Rental and Value of the Bankrupts Eſtate, which being in abſence as to the Creditors, may tend to their loſs and prejudice. *Therefore* it be Statute, that the real Creditors who are in actual poſſeſſion of ſuch Eſtates by Laboring the ſame or ſetting Tacks thereof, be cited to the leading of the Probation of the Rental and Value of the Lands to be Rouped, and that there ſhall be no other Citation or Intimation requiſit to be made to the ſaids Creditors or Bankrupt in any ſubſequent ſtep of the Proceſs, but that it ſhall be ſufficient that they be cited thereto *apud acta*, and in ſpecial as to the time and place of the Roup; And farder to declare, that in all time coming there ſhall be no neceſſity on the Purſuer of the Roup of uſing Intimations at the Paroch Churches and Mercat Croſſes mentioned in the ſaid Act, but that it ſhall be a ſufficient Intimation to the Creditors that they be cited thereto *apud acta* only as ſaid is, and if the Creditors or Bankrupt think fit, that it ſhall be leiſum for them to raiſe Letters in the Purſuers name to intimate the ſaid Roup, the time and place thereof, at whatever Mercat-Croſſes, Kirk-Doors or other places whatſomever they ſhall think fit, and wherever they conceive or apprehend Merchants or Buyers of the ſaids Lands may be found, but that the Purſuer ſhall not be oblidged to do the ſame, notwithſtanding of that Clauſe in the ſaid Act of parliament, which is in ſo far hereby diſpenſed with. *Likeas* that it be furder declared, That where Decreets of Sale are pronounced and extracted, That they ſhall not be quarrellable upon any ground or nullity by any of the ſaids Creditors, cited as ſaid is, but that the ſame ſhall be as valid and ſufficient a Security to the Buyer, as if the ſaids Creditors had diſponed or conſented thereto under their hands, and that the ſamen ſhall alſo be unquarrellable at the inſtance of any other perſon, whether Creditor or Author to the Bankrupt or any way may pretend to have Right or Intereſt to the ſaids Lands, whether by Rights following from the Bankrupt or any other his

predeceſſors or Authors whatſomever: *And farder*, that it be declared, that in regard great Obſtructions are made in the buying of Lands at Roups throw the purchaſers not getting the price taken off his hand, occaſioned by the Jangling and Competitions that falls out amongſt the Creditors anent the ſame. For Remeid whereof, That it be Statute, that it ſhall be leiſum for the Buyer after the elapſing of year and day to conſign the ſaid price either in *ſpecie* or Aſſignations to ſufficient Bonds or Debts in the Clerks of the Proces hands, and that due Intimation be made to the Creditors cited as ſaid is, that the Buyer is to do the ſame by a Nottar and Inſtrument, and that the ſaid price being ſo conſigned or Aſſignations to Debts as ſaid is, That the ſaid Clerk ſhall intimat the ſame to the Lords, and thereupon they are to ordain an Act to be made, declaring that he has conſigned the price or Aſſignations as ſaid is; And therefore diſcharging the Buyer of the Price of the ſaids Lands, and that the ſame ſhall be als valid and effectual for freeing and acquitting him therefrae at the hands of all perſons whatſomever in all time coming, as if the ſamen had been granted by the whole Creditors themſelves; *As alſo*, that in regard when Debitors break, they abſtract or carry away with them the Rights and Securities of their Lands, ſo that it is not poſſible to get or make up a ſufficient Progreſs to the ſaids Lands, That therefore it be Statute and ordained, that if the Debitor was infeft in the ſaids Lands or had a Real Right there to, either by expyred Apprifing or voluntar Diſpoſition, and by vertue thereof has been in Poſſeſſion for the ſpace of———years; That then and in that caſe the Production of the ſaid Seaſin, or Real Rights foreſaid, whereupon no Infeftment has followed, ſhall be held and repute a ſufficient and valid Right in the perſon of the Debitor, without any farder neceſſity for the Creditors to give or the Buyers of the ſaids Lands to crave any other Title or Progreſs to the ſaids Lands for ſtateing the Right thereof in the Debitors perſon, but only as ſaid is, and that the ſaid Seaſin or Real Right foreſaid, whereupon no Infeftment has followed ſhall be held and repute in Law a ſufficient Right to the ſaids Lands to the Buyer thereof, at the Roup without any farder Progreſs.

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